[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

AMADO CHAVES ET AL., APPELLANTS,
v.
THE UNITED STATES ET AL. } No. 4.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

STATEMENT, ABSTRACT, AND BRIEF ON BEHALF OF THE GOVERNMENT.

The plaintiffs, AMADO CHAVES, ROMAN BACA, F. MANZANARES, AUGUSTIN DEL VALLE, and FLORENCIO SANDOVAL, filed their petition in the Court of Private Land Claims for the confirmation of what is known as the CAÑON DE SAN DIEGO tract, situated in the county of Bernalillo and territory of New Mexico, claiming the same as the heirs and legal representatives of Francisco Garcia de Noriega and José Antonio Garcia de Noriega, alleging that prior to January 27, 1788, the aforementioned parties presented their petition to governor Concha, praying for the grant of a tract of land known as the

Cañon de San Diego; that on the 27th day of January of said year the governor granted the tract to the petitioners, and directed the chief *alcalde* of the Queres, Don Antonio Armenta, to place them in juridical possession thereof; that on the 6th day of February of said year the said Armenta, in conformity with the order of governor Concha, delivered to said petitioners, Francisco and José Garcia de Noriega, juridical possession of the land named in said grant and pointed out the boundaries as follows:

> On the north side the water leap (*salto del agua*), on the south side the junction of the rivers, and also a point of a red *mesa* and the lands of the said Indians, and with respect to the east and west there are only some very high *mesas* on both sides of the *cañon*, and these serve as the boundary lines. (R., 1.)

It is alleged that thereafter they remained in possession of the tract during their lifetime, and since their decease said premises have been in the exclusive possession of their heirs and representatives; that the said grant was perfect and invested them with complete title.

It is further alleged that on the 6th of March, 1798, the said Garcias, having been in exclusive possession of said tract for a period of ten years, jointly with four more brothers and fourteen additional persons, petitioned the governor of the province, Don Fernando Chacon, for a grant of land to be known as the Town of the Cañon de San Diego, comprising 116,288 acres, more or less, and embracing within its confirmed outboundaries the tract known as the Cañon de San Diego, which had been

granted before to the said Garcias on January 27, 1788, by governor Concha. That on the said 6th day of March, 1798, governor Chacon granted to the petitioners, numbering in all twenty, the said tract known as the grant to the Town of the Cañon de San Diego; that on the 14th of March of said year, juridical possession was granted to said last-mentioned grantees by the chief *alcalde*, Antonio de Armenta, which has since been known as the grant to the Town of the Cañon de San Diego, with the exception of so much thereof as had prior thereto been granted to Francisco and Antonio García de Noriega, and had been in their possession from the time the same was delivered to them by the chief *alcalde* in 1788.

It is further alleged that said grant of March 6, 1798, was confirmed by congress on January 21, 1860, and that on the 31st of December, 1877, the heirs and legal representatives of Francisco and José Antonio García de Noriega, claiming to own the tract of the Cañon de San Diego under the grant of governor Concha of January 27, 1788, presented their claim to the surveyor-general under the eighth section of the Act of July 22, 1854, and that on March 22, 1880, the surveyor-general decided the same to be valid, and recommended its confirmation by congress, and it is alleged that he decided that the larger grant of March 14, 1798, did not convey the title of the lands granted in 1788 to the Garcias, who had been placed in juridical possession of said tract known as the Cañon de San Diego, by order of governor Chacon in 1788. That said Cañon de San Diego tract was surveyed in 1880,

which survey was approved by the surveyor-general and sent to congress with his report for confirmation, and it appears from said survey that said Cañon de San Diego tract contains 9,752.57 acres. That no further action has been taken relative to the same by the authorities of the United States.

It is alleged that diligent search has been made for the original *borrador*, the archive copy and evidence of said grant, and that the same has not been found, by reason of the notoriously incomplete and mutilated condition of the Spanish and Mexican archives in the territory; that the original *testimonio* delivered to the parties as evidence of title remained in their possession, and that of their descendants and legal representatives, and was afterwards filed in the office of the surveyor-general of the territory of New Mexico, copy of which was made and offered by plaintiffs in evidence. Copies of the proceedings had before the surveyor-general, seeking the confirmation of said grant, were duly filed and marked Exhibit "B." After other formal allegations, the usual prayer for relief follows. (R., 1–4.)

By way of answer, the United States alleges want of knowledge or information sufficient to enable it to form a belief as to whether the petitioners are the heirs and legal representatives of the said Garcias, or whether on January 27, 1788, governor Concha granted the land described in the petition. It denies that Antonio de Armenta, chief *alcalde*, did, under the order of governor Chacon, on the 6th day of February, 1788, place the said Garcia brothers in juridical possession of said land, and denies that the same remained in their possession dur-

ing their natural lives, and that the same since their death has been in the exclusive and lawful possession of their heirs and legal representatives, or that the same was a perfect, or even an imperfect grant, and avers that there never was a grant at all, as alleged in said petition, in 1788. Further answering, the government admits that on the 6th day of March, 1798, said Garcia brothers above mentioned, jointly with eighteen others, petitioned the governor of the province, Don Fernando Chacon, for a grant of land to be known as the Town of Cañon de San Diego grant, but says that it is not true that at said time, as alleged, said Garcia brothers were lawfully in the possession of the premises alleged to have been granted to them in 1788, and that it is not true that the said Town of the Cañon de San Diego grant was petitioned for as an additional grant to the grant of the tract of Cañon de San Diego of 1788. It is averred that the said grant of 1798 embraces within its outboundaries the entire grant sued for in this case.

It is admitted that juridical possession was given to the twenty original grantees of the Town of the Cañon de San Diego grant, but denies that any exception of any kind or character whatever was made in the latter grant to the said twenty grantees, but, on the contrary, it avers that the said Town of the Cañon de San Diego grant, which includes and surrounds the grant sued for, does not make any reference thereto or any reservation thereof, as alleged.

Further answering, it says that if such a grant as alleged was ever made to said Garcia brothers in the year 1788, the same was never accepted, or if it was, it

was abandoned prior to and at the time they joined eighteen others in petitioning for the larger grant which was made in 1798. Further answering, it says that said Garcia brothers, as petitioners for and grantees of the grant of 1798, took each an allotment or *suerte* of land to cultivate and live upon, which was given out in severalty to each of said twenty petitioners in 1798, which said allotments constitute no part nor are they directly connected with the land alleged to have been granted to them in 1788, but are about three miles south of the south line, as claimed by the plaintiffs.

Further answering, the defendants allege that the heirs and legal representatives of the twenty alleged grantees of the grant of 1798, in the year 1859, under the provisions of law, presented their claim through the proper channels, and it was duly reported to congress and the same was confirmed on the 21st day of June, 1860, and thereafter patented to the heirs and representatives of the said alleged twenty grantees, two of which grantees were the grantees of the alleged grant of 1788; that by said act of confirmation of 1860 and by the patent issued thereunder the United States has parted with whatever right, title, or interest it may have had to the same under the treaty of Guadalupe Hidalgo.

Further answering, it says that the heirs and legal representatives are estopped to assert title against the United States for any portion of said land included within the patent of the Cañon de San Diego grant, and they, having failed to apprise the United States of any claim thereto, and having accepted the release of the United States under the grant of 1798, it constitutes an

acquittance under the treaty of Guadalupe Hidalgo, and therefore this claim is not one over which the Court of Private Land Claims has jurisdiction. The United States enters a disclaimer of any interest in and to the land included within the Town of the Cañon de San Diego, patented, as aforesaid, in 1860, and it is therefore not one which, under the laws of nations, the treaty of cession, or the principles of equity, is entitled to confirmation. (R., 6–10.)

Under the provisions of the Act of March 3, 1891, creating the Court of Private Land Claims and conferring jurisdiction upon it, it is provided in section six that "a copy of the petition, together with the citation, shall be served upon any adverse possessor or claimant, the same to be served upon such possessor or claimant in the ordinary legal manner of serving such process in the proper state or territory," etc. Under this provision, a large number of persons claiming to own the Town of the Cañon de San Diego grant, made in 1798, were made co-defendants with the government, who filed the answer to the petition. The answer of these co-defendants is substantially the same as that of the United States.

As a copy of the original Spanish of these granting documents has been omitted from the record, and the government contends that the translation of the granting decree is incorrect in a material part, I herewith insert a correct copy in Spanish of the grant, together with the translation which the government contends to be correct, and present a certificate from the clerk of the Court of Private Land Claims, which is on file with the clerk of this court.

Document No. 5, in Private Land Claim Reported No. 122. The Cañon de San Diego grant, which document is on file in the office of the United States surveyor-general at Santa Fé, New Mexico, being a grant made to Francisco and José Antonio Garcia de Noriega in the year 1788.

Sor. Govor. Dn. FERNANDO DE LA CONCHA:

Franco. Garcia de Noriega, ynterprete de los Navajoes, y José Anto. Garcia de Noriega, con el mas devido respecto ante Vsa., parecemos y decimos, Señor, qe. hallandose un cañon, que le llaman de Sn. Diego, bacante y haviendo visto en él que se puede proporcionar labor, y pastarr algunos Animales nos rendimos á las Reales plantas de la grandeza de Vsa. Solo á pedir y suplicar, el que se digne en nombre de S. M. de favorecernos, con darnos el dicho cañon, para lo dho. por hallarnos fallos de tierra para sembrar, y mereciendo el qe. S. M. nos favoresca. Pedimos por merced el dho. Cañon por todo lo qual

A Vsa. Pedimos y suplicamos sea muy servido el mandar hacer como pedimos que en hacerlo assi; Reciviremos gran bien y merced &a.

FRANCO. GARCIA DE NORIEGA. (Rúbrica.)
JOSÉ ANTO. GARCIA. (Rúbrica.)

STA. FÉ, *27 de Eno. de 1788.*

Concedo en nombre del Rey el cultivo y Labor de la tierra que solicitan los Suplicantes, poniendoles en posesión de ella el Alcalde Mayor de los Queres, Dn. Antonio Armenta, siempre que no resulte perjuicio alguno á los Yndios, y vecinos establecidos en aquellas immediaciones, y que verificado assi, ponga á continuación de este decreto, la citada toma de posesión sin perjuicio de tercero, para copiarlo en el Libro de Govierno, y asentarlo en papel sellado quando llegue á la Provincia.

CONCHA. (Rúbrica.)

En este Cañon de San Diegó, en seies dias del mes de Febrero de mil setecientos ochenta y ocho años, Yo, Dn. Antonio de Armenta, Alcalde Mayor y Capitan á Guerra de la Jurisdición de los Queres, en Virtud de la facultad que me es conferida por el Señor Dn. Fernando de la Concha, Cavallero Comendador de Mora en el Órden de Santiago, Theniente Coronel de los Reales Exercitos, Governador Politico y Militar de esta Provincia del Nuebo Mexico, allandome en el expresado cañon con sitación de los hijos del Pueblo de Xemes, que son los conlindantes con dicha tierra y abiendoles señalado lo que era suio quedaron mui conformes, por no recevir agrabio ninguno en que se de dicho cañon, y tambien saber que es la mente de Nuestro Soberano que sus tierras se pueblen con sus Basallos, en aquello sobrante que hubiere, y no hallando yo ympedimento ninguno que pudiera estorbarlo, y usando de la facultad que me es conferida pasé á dicho Cañon de San Diego y no resultando quien mejor derecho tubiera ni tampoco aber perjuicio de tercero que saliera al reparo, y estando presentes dichos Yndios, Francisco Garcia de Noriega, ynterprete de los Navajoes, y su hermano Josef Antonio Garcia de Noriega, y entendidos de todo los coxí de la mano, los pasié por dichas tierras, arancaron sacate, tiraron Piedras á los quatro bientos y diximos todos á una tres veses, Viva el Rey, Nuestro Señor (Q. D. G.) en señal de verdadera posesión la que aprendieron quieta y pacificamente sin contradición alguna, siendo sus linderos los siguientes: por la parte del Norte, el Salto del Agua; por la parte del Sur, la Junta de los Rios, con mas una punta de una Mesa Colorado, y tierras de dichos Yndios; por lo que mira de Oriente á Poniente no hay mas de solo unas Mesas muy altas, de hambos lados del Cañon, que estas sirben de linderos y no resultando perjuicio alguna quedaron conformes con ellos, y para que asi conste, lo firmé Yo, dicho Alcalde Mayor, Dn. Antonio de Armenta, á una con dos testigos

de mi assa., con quienes autuo á falta de escribano Publico ni Real, que de ninguna clase los hai en toda esta Governación, que de todo doi fee.

Entre renglones, Rio, Vale. (Rúbrica.)

ANTONIO DE ARMENTA. (Rúbrica.)

To.: SALVADOR ANTO SANDOBAL. (Rúbrica.)
To.: NICOLAS ORTIZ. (Rúbrica.)

Translation of Document No. 5, in Private Land Claim Reported No. 122. The Cañon de San Diego grant, which document is on file in the office of the United States surveyor-general, at Santa Fé, New Mexico, being a grant made to Francisco and José Antonio Garcia de Noriega in the year 1788.

Señor Governor DON FERNANDO DE LA CONCHA:

We, Francisco Garcia de Noriega, interpreter for the Navajos, and José Antonio Garcia de Noriega, with the most profound respect appear before your Excellency and state, sir, that a *cañon* which is called San Diego being found vacant, having seen that cultivation may be had and some animals pastured therein, we prostrate ourselves at the royal feet of your Excellency's grandeur solely to ask and pray that you deign in the name of his Majesty to favor us by giving us the said *cañon* for the purposes mentioned, on account of finding ourselves lacking land for planting, and deserving that his Majesty should favor us we ask as a grant the said *cañon;* on account of all which we ask and pray that your Excellency be well pleased to command that what we request be done, that by your so doing we shall receive great benefit and favor, etc.

FRANCISCO GARCIA DE NORIEGA. (Scroll.)
JOSÉ ANTONIO GARCIA. (Scroll.)

SANTA FÉ, *January 27, 1788.*

I grant, in the name of the King, the cultivation and working of the land which the petitioners ask for, the chief *alcalde* of the Queres, Don Antonio Armenta, placing them in possession thereof, provided that no prejudice results to the Indians and residents settled in that vicinity, and it having been so done, following this decree he shall place the said taking of possession without prejudice to a third party, in order to copy it in the government book, and to write it out on stamped paper when the same shall reach this province.

CONCHA. (Scroll.)

At this Cañon of San Diego on the sixth day of the month of February, of the year one thousand seven hundred and eighty-eight, I, Don Antonio de Armenta, chief *alcalde* and war captain of the jurisdiction of the Queres, by virtue of the authority that is conferred upon me by Señor Don Fernando de la Concha, Knight Commander of Mora in the order of Santiago, lieutenant-colonel of the royal armies, civil and military governor of this province of New Mexico, being at the said cañon, having cited the natives of the *pueblo* of Jemez, who are the adjoining owners to said land, and having designated to them that which was their own they were well suited on account of receiving no injury by the giving of said *cañon*, and also knowing that it is the will of our sovereign that his lands be peopled by his vassals in whatever surplus there may be, and finding no obstacle whatever that could interfere with it, and exercising the authority that is conferred upon me, I went to said Cañon of San Diego, and no one appearing who had a better right, nor there being any prejudice to a third party who might make objection, and said Indians, Francisco Garcia de Noriega, interpreter for the Navajos, and his brother,

José Antonio Garcia de Noriega, being present and understanding it all, I took them by the hand, I conducted them over said lands, they pulled up grass, threw stones to the four cardinal points, and we all said together three times, "Long live the King, our Lord (whom may God preserve)," as evidence of true possession, which they received quietly and peaceably without any opposition, their boundaries being the following: On the north side, the waterfall (*salto del agua*); on the south side, the junction of the rivers and also a point of a red table-land (*una mesa colorada*), and lands of said Indians. With respect to the east and west there is nothing more than some very high table-lands on both sides of the *cañon*, which (table-lands) serve as boundaries. And, there resulting no prejudice whatever, they were satisfied with them (the boundaries); and in order that it may so appear I, said chief *alcalde*, Don Antonio de Armenta, signed it, together with my two attending witnesses, with whom I act for lack of a public or royal notary, of which there is none of any kind in all this government, to all of which I certify.

The interlineation "River" is valid.

ANTONIO DE ARMENTA. (Scroll.)

(Armenta's Scroll.)

Witness: SALVADOR ANTONIO SANDOVAL. (Scroll.)
Witness: NICOLAS ORTIZ. (Scroll.)

At Santa Fé, on January 27, 1788, governor Concha, by said decree, grants to the Garcias "*the cultivation and working of the land*," and authorizes Armenta to place them in possession thereof, provided no prejudice shall result to the Indians or residents of the vicinity, which having been done he shall indorse the act of possession following the decree, in order that it might be kept in

the government book, and he instructs him to write it out on stamped paper when he shall have reached the province.

On the 6th day of February, 1788, chief *alcalde*, Armenta, in conformity with the decree of January 27, 1788, having notified the natives of the *pueblo* of Jemez, who were the adjoining owners of said grant, and having designated to them what was their own, they were satisfied, because they were not injured, and finding no further obstacle he proceeded to place Francisco Garcia de Noriega, interpreter for the Navajos, and his brother, Antonio Garcia de Noriega, in the possession of said *cañon* and defined the boundaries thereof.

It will be noticed that the claimants translate the first line of the granting decree of January 27, 1788, "I grant, in the name of the King, for cultivation and working, the land which the petitioners solicit," while the original Spanish is, "*Concedo en nombre del Rey, el cultivo y labor de la tierra que solicitan los suplicantes*," and it is plain to be seen that the preposition "for" can not be used in the translation. When we come to construe this grant in connection with the language used in the granting decree of 1798, the importance of a correct translation will be seen.

About ten years subsequent to the making of this alleged grant, it appears that Francisco and Antonio Garcia de Noriega, interpreters of the Navajo nation, in unison with José Miguel Garcia and seventeen others, petitioned the governor of the province of New Mexico, stating that there was a quantity of vacant and uncultiv-

vated land lying in the Cañon de San Diego, adjoining the boundaries of the land belonging to the Indians of the town of Jemez, and that the settlement thereof would be beneficial to the province and advantageous to their families and descendants, by settling up the lands with their property and cultivating the same, and they asked the governor to grant this for settlement by the persons named therein, and to order that the boundaries be the boundaries of the land granted to the Indians of the *pueblo* absolutely to the middle *arroyo* called Los Torreones, and the line running from north to south to the Vallecito de la Cueva, which is in front of the waterfall and in a transverse line from said middle *arroyo* to the Rito de la Jara. (R., 37.)

It will be noticed that nothing is stated in this petition about Francisco Garcia de Noriega having any interest in the property in the Cañon de San Diego by virtue of the grant of 1788, or any other grant; on the contrary, the statement is made, to which they are a party, that the land was *vacant and uncultivated*. Upon this petition governor Chacon indorsed the following decree:

> In view of the foregoing petition made by José Miguel Garcia and other citizens therein mentioned, in regard to settling in the *cañon* known as San Diego de Jemez, WHERE THE INTERPRETERS OF THE NAVAJO NATION WERE TEMPORARILY STATIONED, I grant to them the aforesaid land in the name of the King, our sovereign, with the expressed condition that it is to be settled by at least twenty citizens; that the lands are to be distributed in equal parts, and that they are not allowed or authorized, for them-

selves or their heirs, to sell or dispose of the lands granted to them. It being his Majesty's will, according to his last orders, that the lands should descend from father to son or his heirs in a direct line; and if any colonist, to suit his own conscience, should desire to remove, under any pretext whatever, his possession or share shall remain for the benefit of the one taking his place, in which case the residents of the same place, or persons marrying there, shall be preferred, and for which no remuneration whatever shall be exacted by the person voluntarily absenting himself or expelled or banished by the authorities on account of his bad conduct; that besides the subdivision above mentioned, a sufficient amount of land is to be left for pastures and watering places as well as to allow for the increase of the settlement, if such may be the case (which is likely to occur)—(torn)—order of the chief justice of that jurisdiction, Don Antonio Armenta, to place the parties in possession under the rules prescribed by law.

In obedience to this decree, Don Antonio Armenta, the same *alcalde* who delivered to the Garcias the possession of the grant of 1788, on March 14, 1798, being at the place and having summoned the natives of the *pueblo* of Jemez, to whom he measured the league belonging to them, found a surplus of two thousand one hundred *varas*, which they had before arriving at the Cañon de San Diego, all of which they claimed as their own, and to which he asserted they had no right, and finding no other impediment, he proceeded to the surplus lands, and finding no one with a better right, and all parties being present and informed with regard to the matter, he took them by the hand and led them over the land in proof

of legal possession, which they received quietly and without opposition; and he proceeded to deliver to each of the said settlers three hundred *varas*, with which they were satisfied, leaving the remainder for the benefit of all, and without any of the land being left for any person to enter; and in order to prevent any other from coming to meddle and create difficulties between the citizens and Indians, he gave them to understand that their boundaries were: On the north the Vallecito de la Cueva, on the south the termination of the Indian league, on the east the boundary of Vallecito, and on the west the opening toward the middle *arroyo* and the Rito de la Jara. (R., 38–39.)

It will be noted that in this act of possession not one single word is said or any mention made of the existence of the grant of 1788, or any claim thereunder by the said Garcias or anyone else, save the Indians, whose claim was ignored, and no reservation seems to have been made of the rights of anyone.

There now appears in the record an independent paper, which purports to have been executed by Armenta on the same day, which is substantially that at the Cañon de San Diego de Jemez, on the 14th of March, 1798, before Armenta, there being assembled all the persons who took possession of said Cañon de San Diego with Francisco Garcia de Noriega and Antonio Garcia de Noriega, two brothers of the first possessors, the said Garcias declared in a loud and clear voice, which all heard, because they shouted with distinctness, and they all unanimously

agreed to abide by what was said by the said Garcias, and their reasons were these:

> Friends and brothers, now each of you is about to take the lands which his Majesty has granted and donated to you; but you are all notified that the lands, which we first and in our first grant, we have been possessing, be all of you aware that I and my brother are going to enjoy the same freely, without any of those present, nor their children nor anybody else, shall desire to interpose obstacles, and because as first possessors we have the right to enjoy said lands and to cultivate them with full title, as well ourselves, our children and our successors; and so that none of those who are present may plead ignorance we have so spoken to-day, there being none absent. The said Garcias having made all the remarks, all unanimously replied that they asked reasonable justice, and that neither by themselves, their children, nor successors, would there be interposed any suit or demand against them at any time, and if they perchance should wish to do so they would take the case until leaving them in peace concerning the said land which they had been so justly possessing. (R., 39–40.)

It also appears that on December 1, 1808, in a report to the governor by Ignacio Sanchez Vergara, that the interpreter of the Navajos, Antonio Garcia, presented to him a document executed by the former *alcalde*, Antonio de Armenta, under the decree of governor Concha, as appears from the grant itself, and the whole of the Jemez Cañon having been settled under an order of governor Chacon and the royal grant made to them, which embraced the lands granted to the Garcias, difficulties and

contentions resulted between them; that he deemed the title of the Garcias better, because they had been prior settlers for a period of ten years, which fact, he says, was made known to the new settlers at the time of their grant and assented to by them; and he requests the governor to determine whether the Garcias had right to the land they claimed and asked him to approve the same, so as to obviate all questions in the future and to determine whether or not the land claimed by the Garcias was included in the latter grant to the settlers, and if not, that a copy of the original, which he inclosed, might be taken, the latter to remain in the archives of the government. (R., 40-41.)

A rough draft, unsigned, of a reply to the *alcalde*, was found in the archives, dated Santa Fé, December 13, 1808, and is what is called a *borrador*. By this communication it appears that the governor declined to decide the question submitted to him by the *alcalde*, but gives it as his individual opinion that the Garcias had the better right, and if the new settlers did not coincide with this view he was to permit them to have recourse to the royal *audiencia* at Guadalajara, as the documents referred to were sanctioned by former governors of the province and the royal *audiencia* alone could annul them, and he returned the documents to be delivered to the parties. (R., 41.)

Plaintiffs introduced in evidence the deposition of SANTIAGO GARCIA Y MONTOYA, taken before the surveyor-general in 1880, who states his age to be fifty-three years, and resides at Guadalupe, on the Puereo river; has known the Cañon de San Diego tract all of his life,

being born there, and twenty years afterwards moved away; the tract belonged to the heirs of Francisco Garcia de Noriega and Antonio Garcia de Noriega; he knew the boundaries as they were understood by the people in the neighborhood. Various persons lived upon the tract from time to time and cultivated portions of it by permission of the owners; that at this time some persons are living on it without their permission, as squatters. When he first knew the tract, one of the grantees, Antonio Garcia de Noriega, lived there with his family, dying there about the year '35; he was at that time about seventy years of age, and upon his death his family moved near the junction of the rivers. When he was born, Francisco Noriega, also one of the original grantees, lived with his family upon the tract, and some of them live there yet. Knows of no adverse claim by anyone. Knows of the tract of land adjoining it, but never heard that they claimed any interest or title to this tract. Has seen the original title papers for this tract and identifies them as Exhibits "A" and "B." He saw them in the year 1840 in the hands of Nerio Montoya, a grandson of Antonio Garcia de Noriega, and that the papers originally in the hands of Francisco Garcia on his death passed to Antonio, and upon the death of the latter into the hands of Nerio, his grandson. The papers, he understood, always remained in the family. He was interested in the land with the grandson of Francisco Noriega. (R., 23–25.)

Nerio Antonio Montoya, examined before the surveyor-general on behalf of the claimant, states he was

seventy-three years of age, resides at Nacimiento, Bernalillo county. Knew the tract called the Cañon de San Diego, which is situated north of the Indian *pueblo* of Jemez on the San Diego river, both sides of which constitute the boundaries. Has been acquainted with the tract since 1822, when he went to live upon it; remained there until October, 1879; the tract was reputed to belong to the heirs of the original grantees, of whom he was one. Knew Antonio Garcia, who was his grandfather and lived at the mouth of the junction of the two rivers. Knows of no conflicting claim to the grant, and the Indians of Jemez have never made any claim to it. States that the heirs and grantees of the other grant of the same name never made any claim to this land; that they were two distinct and separate grants, and have always been so regarded and treated by those claiming under them, respectively. The grant sued for is the small one, the senior and within the latter, but unaffected by it. The original grant papers he knows, and they have been in his possession and keeping since the death of his grandfather, and on his death they passed into the possession of Montoya's mother, who died in the year 1852, residing on the grant at the time of her death, where she had lived since 1822. They remained in his possession since her death, until June last, 1879, when they were delivered to his cousin, captain Augustin del Valle, to be filed with the surveyor-general for approval and confirmation by the government. He recognizes the papers and identifies them as Exhibits "A" and "B." His interest in the grant is as the grandson of one of the origi-

nal grantees, José Garcia de Noriega, and he was about forty-eight years old when his grandfather died. His father's name was Manuel Montoya. Had seen the papers in the possession of his grandfather and had occasion to read them for him; did not remember Francisco Noriega, the other grantee, who was killed when he was very young. (R., 25–27.)

AUGUSTIN DEL VALLE, one of the plaintiffs, examined before the surveyor-general on behalf of the claimants in 1880, states his age to be forty-eight years and his residence at the town of Bernalillo. Papers were handed to the witness, and he states they are the same papers he handed to Mr. Chavez, his attorney, and they came into his possession at the end of June or July last, 1879, at the house of Nerio Montoya at Nacimiento, who delivered them to him to be filed with the surveyor-general. (R., 27–28.)

On the trial of the case, AMANDA BOARDMAN, chief clerk of the surveyor-general's office, testified on behalf of the plaintiffs and produced certain papers from that office, to wit: Papers in the case reported, No. 25, Town of the Cañon de San Diego grant, and No. 22, Cañon de San Diego tract. The paper identified as archive 379 is composed of the letter of the *alcalde* to governor Manrique and his reply thereto (R., 40–41), dated respectively December 1 and December 13, 1808. (R., 47–48.)

AMADO CHAVEZ, one of the plaintiffs in the case, testified that he was forty-three years of age, residence Santa Fé, superintendent of public instruction of the territory, and the great-grandson of Francisco Garcia de Noriega;

that Augustin del Valle, one of the claimants, was grandson of Antonio de Noriega; that Ramon Baca was a grandson of Francisco Garcia de Noriega. That Francisco and Antonio Garcia de Noriega were two Spanish brothers who were interpreters for the Navajos, and lived in the Cañon de San Diego, and were the owners of the tract of land known by that name. Francisco Garcia was captain of the militia under the Spanish government, and was killed by the Navajos. He knows nothing about the possession of the *cañon* by the descendants of the two Garcias, except as a matter of family history. That Augustin del Valle, grandson of Antonio, is the owner of the house of his grandfather and the land that belonged to him, and he is in possession of the same; he thinks Augustin del Valle lives at Jicarilla, in Lincoln county, and does not know who is in possession of the land at the present time; knows where the Jemez river is, and knows where Guadalupe creek joins it, and the land possessed by Augustin del Valle is up from the junction of the rivers, but he can not tell how far. Has known the Cañon de San Diego all of his life. First saw the papers in the case about twelve years ago, at the time they were presented to the surveyor-general; had heard of them all of his life but had not seen them; the first time he ever saw them they were handed to him by Augustin del Valle, who told him he had obtained them from his grandfather. Knew about the g ant to the Town of the Cañon de San Diego, and that it was recommended for confirmation, but did not remember the date.

Here counsel offers in evidence Exhibits "A" and "B," the original grant of 1788, to which the government

interposed objection, because the same was not shown to be an archive or that it was properly recorded, or that the record had been lost or destroyed, and the government especially objected to the translation of the granting decree thereof; also the reservation made by the *alcalde* in 1798 of the land alleged to have been granted in 1788, to the introduction of which counsel for the government objected upon the ground that the same was signed by the *alcalde* without any attending witnesses; that no notice was given that it had been accepted and any reservation made; that the same was produced from private hands and filed by private parties and was not one of the archives; that it was not in due form; that he had no authority to make any reservation from the orders and decrees of the governor, and, if he did so, he exceeded his authority, and it was not subsequently ratified by being returned to and approved by the governor.

Next was offered in evidence the correspondence between Ignacio Sanches Vergara and the governor, dated, respectively, December 1 and 13, 1808. Objection was made to the reply of the governor, because it was an unsigned paper, and does not purport to have been executed by anyone for and on behalf of the governor, and does not purport to be the act of the governor, acting for and on behalf of the government, but merely a private opinion.

On cross-examination, Amado Chaves testified that he had examined the papers, but does not know where the boundaries of the land are. The north boundary was pointed out to him, and it is above the Hot Springs some distance, but he does not know how far—possibly two

miles. The south boundary, as the junction of the two rivers, was pointed out to him, but he does not know it of his own knowledge. When he was down there, the grant had not been surveyed; he was on his way to Jemez Hot Springs. He does not remember whether he knew of the existence of the grant then or not. He obtained his information from Augustin del Valle. His great-grandmother on his father's side was born on the grant of the Cañon de San Diego. He does not know of any settlement between the Indian *pueblo* of Jemez and the Hot Springs, except at the junction of the Jemez and Guadalupe rivers. His grandmother spent most of her life at Cevilleta, about fifty miles away from the grant.

Upon reexamination he states he was informed Francisco Garcia de Noriega was killed in 1807.

On recross-examination he states he was present in the surveyor-general's office when testimony was taken in 1880, and was prosecuting the claim. He believes that Mr. Miller, the chief clerk, wrote out the testimony of Santiago Garcia y Montoya. The location of the ranch of Antonio Garcia de Noriega was pointed out to him by Augustin del Valle. He does not remember whether the same was above or below the junction of the rivers; does not know the south boundary of this ranch now. The muniments of title were brought to him by Augustin del Valle, and he is at present living in Lincoln county. When he first knew him, he lived at Bernalillo, near Albuquerque, and he told him he had got the papers from his grandfather. He had heard them spoken of in the family, but never had seen them. (R., 48–54.)

WILL. M. TIPTON, special agent of the government, testified on behalf of the defendants. He identified the document constituting the grant of 1798, or the town of the Cañon de San Diego grant as archive 375, consisting of the original *expediente* and *testimonio* thereof, bearing the indorsement of governor Chacon, who had ordered the grant made. At this point the government offered in evidence the petition presented to the surveyor-general for confirmation of this grant, and his report thereon upon which confirmation was had by the act of congress of 1860, Vol. 12, Statutes at Large, section 3, page 71. Mr. Tipton also identified the approval of the plat of said grant under the act of confirmation. (R., 54–56.)

JESUS TRUJILLO testified on behalf of the defendants that he was seventy-eight years old, resided at the Cañon de San Diego, and had lived there all of his life; knew the Indian *pueblo* of Jemez, and lived about a league and a half from the *pueblo* proper, south of the *cañon* and at the junction of the rivers San Diego and Our Lady of Guadalupe. He knows where the north line of the Indian *pueblo* lands is, being about four hundred yards from the *cañon*. Antonio Garcia de Noriega formerly owned the property upon which he now lives; that he bought the property from Nerio Montoya, a grandson of Garcia; that he occupies nine hundred *varas* from north to south, formerly belonging to José Garcia; all of his lands are at the edge of the *pueblo* league beginning right at the boundary of the league. He saw people occupying land at the junction of the rivers as far back as he could remember—in 1837. Knew José Antonio Garcia de

Noriega; he lived in the house now occupied by the witness; had heard of his brother, Francisco de Noriega, but did not know him; did not know the lands that had been allotted to him in the vicinity. Knows where the Jemez Hot Springs are, being about nine miles north from the junction of the river; the first person he remembers living at the Springs was Lorenzo Gonzales in 1837; at that time the *cañon* was depopulated by the hostility of the Indians; he went back in 1843. The various ranches were all in the *cañon*, divided into portions of three hundred *varas*. He first heard of the little grant in 1850, when the surveyor of the United States came there.

Both of the grants were brought and delivered to him together, and he told the surveyor the number of lots under the decree of Armenta and that of Chacon. They got a survey of the second grant. The papers of the first grant came from the house of the late Nerio Montoya; that was the first time the witness had seen them. He knew José Antonio Garcia. Prior to 1850 he never heard of the Noriegas (Garcias) laying any claim under the little grant. He claims his lands under the second grant and has always done so. Knew José Francisco Archuleta in his lifetime. He lived at the Cañon de San Diego at the place called El Rillito, about two thousand *varas* above the *cañon*. After that he lived at the Springs about nine miles above the junction of the rivers. He was eighty years old when he died; his lands were located at Rillito, about eight miles from the Springs and about two thousand *varas* north of the junction in the Cañon de San Diego. There are two *cañons*, the

Cañon de San Diego and the Cañon de Guadalupe. The Cañon de Guadalupe is in the large grant, and the Cañon de San Diego is in both the large and small. They come together at the junction of the rivers and branch off to the north to the right and left, Guadalupe to the right and San Diego to the left. Lands were allotted in both *cañons*. José Francisco Archuleta had land at the Springs in the year 1840. The Springs are not in the grant, they are above it. The people constructed their houses at the end of the meadows near the Springs in the year 1843; Archuleta lived there before. The Springs were abandoned when the Texans came in; he does not remember the date. All of the people were driven away from their possessions in the Cañon de San Diego. Knew the lands which Mr. Miller bought from Archuleta; they are situated at a place called Del Pueblo, about six hundred yards north of the Springs. On cross-examination he testified that he did not know the little grant very well; he thinks that the Cañon de Guadalupe is not on the small grant; states that the people settled there at Guadalupe when it was partitioned them by Chacon and Armenta. (R., 56–63.)

Emiterio Archuleta testified on behalf of the defendants, that he lives at the Hot Springs, Bernalillo county, and his father's name was José Francisco Archuleta, who died about three years before. His grandfather's name was Blas Archuleta; the wife of Blas Archuleta was named Josefa Jaramillo, who was a daughter of José Jaramillo, one of the original grantees in the second grant. Witness is forty-six years old and born

in the Cañon de San Diego, about a mile and a half north of the junction of the rivers. His father had land there which formerly belonged to José Jaramillo, his grandfather, one of the original grantees. Witness lived there twenty-two or twenty-three years; his grandfather had three hundred *varas* there which still belonged to the family; he lived there till 1865 when he went up to the Springs; four or five persons went up with him; the first person, to his knowledge, who lived at the Springs was his father. Witness does not know how many people were living at the junction of the river at the time he was born. There were a good many living up the *cañon* near the place where he was born. Pablo Gallegos had planted land between his father's and the junction of the rivers. After going to the Springs his father settled and cultivated land there. Part of that land belongs to the family of his father and another part of it was conveyed away. His mother's name was Viviana Montoya. He knows that some relatives of his mother were grantees of the grant to the Montoyas, and his grandmother's name on his mother's side was Marta. The name of his grandmother's husband was Juan Antonio Montoya, whose father's name he does not know. On cross-examination he testifies that he remembers from the time he was eight or ten years old, he was living then with his father, in the Cañon de San Diego, as before stated. Counsel asked witness if he did not say that his father had lands allotted to him in the Cañon de Guadalupe, to which witness replied he did not, that he and others had lived there, having some strips of land in the Cañon de

Guadalupe, but that the land in that *cañon* was not allotted to him. (R., 56–67.)

FRANCISCO PEREA testified on behalf of the defendants that he was sixty-one years old, born at Padillas, thirty miles below Albuquerque, and lives at the Jemez Hot Springs and knows the land in question claimed under the grant of 1788. Knows where the Town of the Cañon de San Diego is; has lived most of his life in Bernalillo, about forty miles from Jemez. First went to the Hot Springs in 1853, and nobody was living there at the time. Knows the boundaries of the little grant, and at the time he went there there was no person living on it. There were persons living at the town of the *cañon* below. The town of the *cañon* is situate about a mile above the junction of the rivers in the Cañon de Guadalupe. Nobody was living near the Cañon of the Jemez. Since 1853 he has been through the *cañon* nearly every year. Learned of persons living there in 1864 and 1865. Francisco Archuleta Sandoval and José Francisco Boros live there a little above Domingo Salas. He first heard of the little grant in 1865, until when he only knew of the large grant. He had the records searched when he heard of the little grant and found there was no such grant. He looked everywhere in search of it and was assisted by the agent of the United States; looked at the records in the office of surveyor-general Atkinson; Miller was clerk; they got out all of the cases. The reason he became interested was because he was going to the Hot Springs. When he first heard of the Jemez Hot Springs the condition of the *cañon*

was wild, and there were some ruins of houses above which were occupied, especially the property which he inherited from his mother. His people got their land from a man by the name of Aguilar and Lopez, in the big grant, located about two miles from the Springs. (R., 67–69.)

JUAN MARTIN testified, on behalf of the defendants, that he lives at the Cañon de San Diego and is fifty-seven years old; his father's name was Matias Martin, and his grandfather's name was Juan Domingo Martin. He lives on the land which came to him through his father; his grandfather lived on the same piece of land. It is situated two miles above the junction of the rivers, and the *cañon* is sometimes called the Cañon of our Lady of Guadalupe, but it is the same *cañon* as San Diego. Witness first heard of the papers in this case in 1861, and he describes the discovery of the papers in this case as follows:

> In the year '61 this man that I saw was married to a sister of mine, Nerio Montoya. Then he was going over his papers, and he showed me this paper and said to me: "This paper had been given to my grandparents;" and then he said to me, "This paper is not worth anything to us, his heirs, because this paper was first given to our grandparents and my uncle, José Antonio Garcia de Noriega and Francisco Garcia, and they having transpired there came some grandchildren, Don Francisco Garcia de Noriega, Augustin del Valle, and Agapito Garcia." When they came to the house of this Don Nerio Montoya, they brought with them Father Valencia, and then Nerio Montoya went and brought the papers and placed them on the table; while they were

looking over the papers, Father Valencia found this paper which Don Nerio had said to me had belonged to our grandparents, and then Father Valencia took this paper and then went outside, and as I was an errand boy I went out in the yard also, and Father Valencia said to Augustin del Valle, "Man, take this paper; it will be worth something to you some time." I do not know anything else about that matter. (R., 70.)

Witness states no one had made any claim under these papers prior to that time. (R., 69–71.)

J. W. MILLER testified, on behalf of the defendants, that he resides at the *pueblo* of Jemez and is acquainted with the Cañon de San Diego; knows Juan Martin, who has just testified, who lives about a mile south of the Jemez Hot Springs, and cultivates land about a mile south of where he lives; it is five miles from the *pueblo* of Jemez to the junction of the rivers. On cross-examination, witness says Martin has been living in the Cañon de San Diego to his knowledge for nineteen years. Does not know whether he lived in the Cañon de Guadalupe or not. (R., 71.)

ANTONIO JOSÉ GARCIA testified, on behalf of the defendants, that he lives at the Cañon de San Diego, and was born in the year '25. His wife and himself are descendants of Francisco Garcia de Noriega and Antonio Garcia de Noriega. Lives near the Hot Springs; was born at Albuquerque, and went to the Cañon de San Diego in 1863. At that time no one was living at the springs except Francisco Cordova. Owns land above the junction of the rivers at Hot Springs, where he lives.

Obtained the land from various individuals. Witness claims his land by purchase and not as an heir of the Noriegas. (R., 71–72.)

J. W. MILLER, recalled, stated that he claims to own lands in the grant by deed from Archuleta, Juan Francisco Archuleta, and Polito Mestas. The land obtained from Mestas was deeded to him by Antonio Atencio, who claims, he believes, as an heir. (R., 73.)

JESUS TRUJILLO, recalled, testified, on behalf of the defendants, that there were seventy persons living at the Cañon de San Diego, north and south of the junction of the rivers, and he names a number of persons who lived in the *cañon* above the forks of the river. This was about the year 1820, and they lived there until the year 1837, when he saw them at Jemez, having left the *cañon* on account of war with the Indians, and returning in the year 1843. When they returned, they made a small town in the Cañon de San Diego and Guadalupe. There are only a few inhabitants there now, altogether not exceeding twenty or thirty families. On cross-examination, witness states he was born in the "year fifteen." (R., 73–74.)

B. S. RODEY testified, on behalf of the defendants, that he lives at Albuquerque and is an attorney at law there; is one of the defendants in the case and filed an answer. His interest in the grant of 1798 is by purchase of a third interest of Francisco Archuleta; also purchased some strips of land near the Springs, the deeds being dated in 1887. Witness states that he purchased the land and received the deeds without any knowledge

of the existence of the smaller grant. On cross-examination, he states that he gave $100 and $2,500 worth of services for the land. The lands he purchased are within the smaller grant, and he never heard of its existence till three months ago. (R., 75.)

JESUS TRUJILLO, recalled, testified that he knew Juan Atencio, who was his brother-in-law. His father was José Atencio. Tomas Atencio owned the land where Mr. Miller lives, and Mr. Miller is occupying and cultivating the land that formerly belonged to José Atencio. Knew Nerio Montoya, whose father was Tomas Montoya. (R., 76.)

This is all the testimony in the case.

BRIEF AND ARGUMENT.

The real interest which the government has in securing a rejection of the grant claimed in this case (Cañon de San Diego) is that because all of the land included within the outboundaries of this grant (1788) was confirmed and patented by the United States to the heirs and legal representatives of the original grantees of a grant made in 1798 (Town of Cañon de San Diego), two of whom were Francisco Garcia (de Noriega) and José Antonio Garcia (de Noriega) grantees of this (1788) if the court should hold that the earlier grant (1788) made to these Garcias, who were then interpreters for the Navajo nation, vested in them a complete and perfect title prior to the making of the later grant, the government might become liable for a sum not exceeding $1.25 per acre for the land included within the outboundaries

of the older and smaller grant (1788). (See Act of March 3, 1891, section 14, creating the Court of Private Land Claims, Reynolds' Spanish and Mexican Land Laws, p. 15.)

A majority of the judges of the court below rejected this grant, in an opinion written by Mr. Justice Sluss, which very clearly sets forth the contentions of the government and the grounds upon which the court rejected the claim (R., 28–33), which were that the Navajo interpreters, Francisco and José Antonio Garcia and those claiming under them were estopped from asserting title adversely to the patented grant of 1798, for the reason that they were the principal petitioners for the larger and subsequent grant of 1798, and that no reservation was made of any rights they had under the earlier and smaller grant of 1788, except the reservation of the lands which they were actually cultivating at the time.

A minority of the court, Mr. Justice Stone and Mr. Justice Murray, filed dissenting opinions, holding that all of the rights and all of the land included within the outboundaries of the grant of 1788 were specifically reserved and retained by the Navajo interpreters, Antonio and Francisco Garcia, and that in 1808, upon a report by the *alcalde*, the governor of the province adjudicated the grant in favor of the Garcias.

Considering all the documents relating to or in any way bearing upon both of these grants, I think it will be clearly demonstrated that the position of the majority of the court below is unassailable.

The government does not agree with the translation of the title papers of the earlier and smaller grant of 1788

(Cañon de San Diego) which has been used by the appellants. Under ordinary circumstances the difference between their translation and that of the government might be deemed immaterial, yet when we come to construe the recitals in the title papers of each of the grants the importance of a correct translation is at once apparent. The translation of appellants of the grant of January 27, 1788, by governor Concha (R., 14), is "I grant in the name of the King, *for* cultivation and work, the land," etc., the original text of which is "*Concedo en nombre del Rey, el cultivo y labor de la tierra,*" and this the government translates, and correctly so, "I grant in the name of the King *the cultivation and working* of the land," etc. When this is taken in connection with the recitals in the decree of the governor making the grant of 1798, wherein he states, "In view of the foregoing petition made by José Miguel Garcia and other citizens mentioned therein, in regard to settling in the *cañon* known as the San Diego de Jemez, *where the interpreters of the Navajo nation were temporarily stationed*," etc., it will be seen that governor Chacon did not understand that the Garcias (de Noriegas) were occupying the *cañon* or they had any absolute title to it, and he made the grant in 1798 with that condition in view.

Referring specifically to the grant of 1798, for one hundred and sixteen thousand acres, which has been confirmed and patented, it will be seen by the petition for the grant (R., 37) that Francisco and Antonio Garcia, brothers and interpreters of the Navajo nation, in unison with eighteen others named in the petition, applied for a grant of land, stating "a quantity of vacant and uncul-

tivated land lies in the Cañon of San Diego, adjoining the boundaries of the land belonging to the Indians of the town of Jemez," and that a settlement thereof would be beneficial to the province and advantageous to their families and descendants by settling upon these lands with their property and cultivating the same. The boundaries of the land desired are set forth in the petition, and it is admitted that they entirely include the grant of 1788. Not one word is stated in this petition that any claim was asserted to or right sought to be exercised over the land so included, under the previous grant of 1788.

The point at which this settlement was to be made, and where there was "a quantity of vacant and uncultivated land," was the very place named in the grant of 1788, the Cañon de San Diego. Upon this petition governor Chacon made the grant, wherein he recites, as above referred to, that the interpreters for the Navajo nation "were temporarily stationed" there; also requiring that the same should be settled by at least twenty citizens, that the land should be distributed in equal parts, and that they were not permitted to dispose of the land granted them, etc.; that besides the land subdivided among them, there should be left sufficient for pasturing and watering places, as well as to allow for the increase of the settlement, and he directs that Don Antonio Armenta place the parties in possession under the rules prescribed by law.

Up to this point the proceedings were regularly participated in by the Garcias, the Navajo interpreters mentioned by governor Chacon, and nothing appears in

these proceedings showing that there ever had been a grant in 1788 to the Garcias alone, or to show that the very spot, now claimed to have been reserved by them, was ever occupied or cultivated under any grant.

Antonio Armenta, the *alcalde* who was ordered to deliver the possession to the claimants, executed what is commonly called and known as the act of juridical possession, wherein he states that in the Cañon de San Diego de los Jemez, having summoned the natives of the *pueblo* of Jemez, to whom was measured the league belonging to them, he found a surplus of two thousand one hundred *varas*, which they (the Indians) had, before arriving at the Cañon de San Diego and were claiming as their own, but to which, the *alcalde* states, they had no right in any manner; and believing that it was the wish of the sovereign that his lands be settled by his citizens wherever a surplus was found, finding no impediment, and using the authority in him vested, and finding no one with a better title, and the Garcias (the Navajo interpreters) and the eighteen others named in the petition being present and *well informed* in the matter, he took them over the land, performing the usual formal acts in proof of legal possession, and they received the land quietly and peaceably. After concluding these formal ceremonies he states, "I delivered to each one of said citizens three hundred *varas*, with which they were well satisfied, leaving the remainder for the benefit of all, and without any other lands left for any person to enter," and he proceeds to define the boundaries (which include the lands claimed under the grant of 1788) as they appear in the act of

juridical possession. (R., 38–39.) By this act of possession there were allotted six thousand *varas* to twenty persons, two of whom were the Garcias (Navajo interpreters), the grantees of the alleged grant of 1788.

Claimants produce an independent document, signed by Armenta and dated upon the same day, purporting to have been executed at the same place and in the presence of the same parties as the act of juridical possession. (R., 39–40.) It is this document which forms the basis for the contentions of appellants, which were largely followed by a minority of the court below in their dissenting opinion. I have serious doubts as to the *bona fides* of the parties in the execution of this document by Antonio Armenta upon the date and at the place it purports to have been made, to wit, in the Cañon de San Diego de los Jemez, March 14, 1798; my reason for doubting its authenticity is that no mention was made in the act of juridical possession of its execution, nor of any fact contained therein, a most extraordinary and unusual omission if there was any intention by the parties to make any reservation whatever. Any reservation contemplated should have been placed in the title papers themselves, in order that the governor might be apprised of that fact. Certainly there is nothing in the petition or grant to inform him of any adverse claim that existed or would be made in favor of the Garcias (Navajo interpreters).

I also doubt its *bona fides*, because Antonio Armenta did not execute this instrument in the same manner he executed the other documents and the act of possession,

at the alleged identical time and place, in this that it was executed without any witnesses; and being at the same time and place why was it not executed with the assistance of Salvador Lopez and José Miguel Garcia, those that witnessed the execution of the act of juridical possession? I do not believe that Armenta executed this document at the time and place alleged; if so, why was it not legalized, with the usual witnesses, as should be done in all documents executed by the officers of the province, or before a royal notary? This instrument was not attached to nor made a part of the *expediente* of this grant, and it was evidently intended to be an unattested private paper and retained by the Garcias until the opportunity was ripe for its presentation.

It is attempted to give this paper the same force and effect as the act of juridical possession, and it can not be conceived why the recitals contained in it were not included in the act of possession, if the proceedings they describe took place at that time.

But, let us assume that the instrument was properly executed at the time and place it purports to have been. It is evident that the construction placed upon it by a majority of the court below was the correct and only reasonable one, that the reservation only included the lands which the Garcias had been cultivating prior to 1798 and not the entire grant of the Cañon de San Diego of 1788.

Six thousand *varas* were allotted north of the north line of the Indian *pueblo*. The *alcalde* found two thousand one hundred *varas* of vacant land between that line

and the Cañon de San Diego, so that, without considering these two thousand one hundred *varas*, there were left three thousand nine hundred *varas* that must have been allotted in the Cañon de San Diego, and within the tract now claimed under the earlier grant of 1788. It can hardly be contended that the *alcalde*, the Garcias, and the other allottees would have proceeded with the allotment of three thousand three hundred *varas* (the six hundred *varas* allotted to the Garcias being deducted) and at the same time have notified the eighteen remaining allottees that they had no right or title to the lands assigned them. Such a contention is absurd; but if we receive this unattested instrument with the same consideration as the act of possession, such an understanding is forced upon us. Thus, the acts of the parties themselves, as well as of the officials acting for the government, necessarily leads to a construction of this instrument in harmony with the views taken by a majority of the court below.

It has also been contended that these lands were not allotted in the Cañon de San Diego, but in the Cañon de Guadalupe. This contention is effectually controverted, however, by the recitals of the instrument executed in favor of the Garcias, which has just been under consideration, and also by the subsequent proceedings taken by the *alcalde* Vergara in 1808, to which we desire now to call the attention of the court.

It appears (R., 40–41) that in 1808 a controversy arose between the Garcias and some of the grantees who were occupying this *cañon* under the grant of 1798. On

December 1, 1808, the *alcalde* made a report to governor Manrique, wherein he states that the Navajo interpreter (Antonio Garcia de Noriega) presented to him a document executed in his favor by the former *alcalde* of the jurisdiction, Antonio de Armenta, under the decree of Don Fernando de la Chacon, as appears from the grant itself, and the whole of the Jemez Cañon having been settled under the order of Don Fernando Chacon, under a royal grant which embraced the lands granted to the Garcias, and by reason thereof contentions resulted because the Garcias asserted title to all the land in the *cañon*, and that he deemed the title claimed by Antonio Garcia to be founded in law, he having been the prior settler for a period of ten years; that at the time the new settlers were given possession they gave their consent, as the Garcias made it appear by a document which the *alcalde* executed to the two brothers that their lands were to be reserved, which he inclosed to the governor, and asked that he decide the question so as to avoid all further difficulties.

On December 13, 1808, the governor replied to this communication (R., 41), stating that the matter did not require his decision, inasmuch as the grant of the Garcias made their rights appear clear, which, being the older, always has the preference, and that the later settlers could not deny to the Garcias a better title, and so the Garcias should remain on the same grant which they had held prior thereto, and if the new settlers did not coincide in the matter, he should not permit them any recourse; he also stated that the documents referred to

were sanctioned by former governors, and that the royal *audiencia* alone could annul them. He returned the documents to the *alcalde* with instructions to deliver them to the parties interested.

It is contended by appellants that this proceeding was judicial and bound the parties thereto. Such a construction is giving to this letter a greater dignity than the governor expressly states it should have. It was only the individual opinion of that gentleman, and bound neither the government nor the parties thereto. It is unsigned. I think the minority of the court below, in their dissenting opinions, have given to this letter more scope than it deserved. It is not probable that the validity of the allotments made by Armenta of the lands settled under the grant of 1798 within the Cañon de San Diego de Jemez was at all questioned, but construing these proceedings of 1808 in connection with all of the papers relating to the grant of 1798 and the acts of the parties at the time, I am led to the conclusion that the communication of the *alcalde* in 1808 relates to the six hundred *varas* that had been formerly possessed and cultivated by the Garcias under the grant of 1788, and to which they were given a preferred right in the allotments made by Armenta at the time of delivering juridical possession.

If this conclusion is not correct, I am convinced that the unattested instrument given to the Garcias by Armenta, and purporting to have been executed at the same time and place as the act of possession of 1798, March 14th of that year, was actually executed by Armenta

after he went out of office, when he could not obtain the witnesses who attested the act of juridical possession, and just prior to the initiation of the proceedings by Vergara in 1808. At least, from the manner and form of the independent paper, the *bona fides* of Armenta, Vergara, and the Garcias is open to serious question, for it must be admitted that Armenta, with the assent and in the presence of the two Garcias, allotted to the settlers under the grant of 1798 at least three thousand three hundred *varas* of land lying in the Cañon de San Diego de Jemez, and which they had been possessing under said grant and allotment up to the date of the proceedings initiated by Vergara in 1808.

In discussing the unattested instrument of Armenta, dated March 14, 1798, at the Cañon de San Diego, and the proceedings initiated in 1808 by Vergara, a majority of the Court of Private Land Claims placed a very reasonable and extremely conservative construction upon them and their integrity. It seems to me, however, that a careful examination will stamp the *bona fides* of the proceedings as extremely doubtful, inconsistent with the recitals contained in the petition, the grant, and the act of juridical possession, and inconsistent with the construction placed upon the rights of the Garcias by Antonio Armenta and themselves at the time the allotments were made in the Cañon de San Diego to their cograntees of three thousand three hundred *varas*, and tested by every ordinary rule of construing instruments and the acts of parties under them, the unattested alleged reservation, dated in the Cañon de San Diego, March 14, 1798,

at the same time and place of the execution of the act of possession must result in its exclusion.

I respectfully submit that the judgment of the court below, rejecting the grant, should be affirmed.

Respectfully submitted.

MATTHEW G. REYNOLDS,
Special Assistant to the Attorney-General.

JOHN K. RICHARDS,
Solicitor-General.

certificate of 1798 and the correspondence of 1808 conduct to no other result; and that, in the light of all the evidence, the conclusion of the court below was correct.

This was a petition filed by heirs and legal representatives of Francisco Garcia de Noriega and José Antonio Garcia de Noriega, for the confirmation of an alleged grant made by Governor Concha, January 27, 1788, of 9752.57 acres, called the Cañon de San Diego, situated in the county of Bernallilo, New Mexico, and included within a grant of 116,288.89 acres by Governor Chacon, March 6, 1798, alleged in the petition to have been to the "town of the Cañon de San Diego."

The granting papers of 1788 were produced and placed in the archives of the Government by claimants in 1879. As translated by the Government, they read as follows:

"Señor Governor Don Fernando de la Concha:

"We, Francisco Garcia de Noriega, interpreter for the Navajos, and José Antonio Garcia de Noriega, with the most profound respect appear before your Excellency and state, Sir, that a *cañon* which is called San Diego being found vacant, having seen that cultivation may be had and some animals pastured therein, we prostrate ourselves at the royal feet of your Excellency's grandeur solely to ask and pray that you deign in the name of his Majesty to favor us by giving us the said *cañon* for the purposes mentioned, on account of finding ourselves lacking land for planting, and, we deserving that his Majesty should favor us, we ask as a grant the said *cañon;* on account of all which we ask and pray that your Excellency be well pleased to command that what we request be done, that by your so doing we shall receive great benefit and favor, etc.

"Francisco Garcia de Noriega. (Scroll.)
"Jose Antonio Garcia. (Scroll.)

"Santa Fe, *January* 27, 1788.

"I grant, in the name of the King, the cultivation and working of the land which the petitioners ask for, the chief *alcalde* of the Queres, Don Antonio Armenta, placing them in

possession thereof, provided that no prejudice results to the Indians and residents settled in that vicinity, and it having been so done, following this decree he shall place the said taking of possession without prejudice to a third party, in order to copy it in the government book, and to write it out on stamped paper when the same shall reach this province.

"CONCHA. (Scroll.)

"At this Cañon of San Diego on the sixth day of the month of February, of the year one thousand seven hundred and eighty-eight, I, Don Antonio de Armenta, chief *alcalde* and war captain of the jurisdiction of the Queres, by virtue of the authority that is conferred upon me by Señor Don Fernando de la Concha, Knight Commander of Mora in the Order of Santiago, lieutenant colonel of the royal armies, civil and military governor of this province of New Mexico, being at the said cañon, having cited the natives of the *pueblo* of Jemez, who are the adjoining owners to said land, and having designated to them that which was their own they were well suited on account of receiving no injury by the giving of said *cañon*, and also knowing that it is the will of our Sovereign that his lands be peopled by his vassals in whatever surplus there may be, and finding no obstacle whatever that could interfere with it, and exercising the authority that is conferred upon me, I went to said Cañon of San Diego, and no one appearing who had a better right, nor there being any prejudice to a third party who might make objection, and said Indians, Francisco Garcia de Noriega, interpreter for the Navajos, and his brother, José Antonio Garcia de Noriega, being present and understanding it all, I took them by the hand, I conducted them over said lands, they pulled up grass, threw stones to the four cardinal points, and we all said together three times, 'Long live the King, our Lord (whom may God preserve,)' as evidence of true possession, which they received quietly and peaceably without any opposition, their boundaries being the following: On the north side, the waterfall (*salto del agua*); on the south side, the junction of the rivers and also a point of a red table land (*una mesa colo-*